

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re TREMONT SECURITIES LAW, STATE
LAW AND INSURANCE LITIGATION

Master Docket No. 08 Civ. 11117 (TPG)

This document relates to:

THE INSURANCE ACTION, 09 Civ. 557
(TPG), specifically to:

CAYMAN NATIONAL TRUST
COMPANY, LTD., AS TRUSTEE OF
THE INTERNATIONAL DAD TRUST,

Plaintiff,

-against-

TREMONT OPPORTUNITY FUND III, L.P.,
et al.,

Defendants.

11 Civ. 1687 (TPG)

**MEMORANDUM OF LAW IN SUPPORT OF
TREMONT OPPORTUNITY FUND III, L.P. AND TREMONT INTERNATIONAL
INSURANCE FUND L.P.'S MOTION FOR PARTIAL RECONSIDERATION**

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Tremont International Insurance Fund L.P.*

Pursuant to Rule 6.3 of the Local Civil Rules of this Court, defendants Tremont Opportunity Fund III, L.P. and Tremont International Insurance Fund L.P. (collectively, the “Funds”) respectfully request partial reconsideration of the opinion of this Court dated May 23, 2013 (the “Opinion,” Dkt. No. 56) to the extent it denied the Funds’ motion to dismiss the claims of breach of fiduciary duty and violation of the Texas Securities Act (“Motion,” Dkt. No. 46) alleged in plaintiff’s Second Amended Complaint (the “Complaint”).

ARGUMENT

THE COURT SHOULD GRANT THE FUNDS’ MOTION FOR RECONSIDERATION

The Funds hereby adopt and incorporate by reference the legal arguments and authorities set forth in second paragraph of the Tremont Defendants’ memorandum of law in support of their motion for partial reconsideration (the “Tremont Brief”).

A. The Complaint Does Not Adequately Allege a Fiduciary Relationship

The Funds hereby adopt and incorporate by reference the legal arguments and authorities set forth in Point I.A of the Tremont Brief. In addition to those arguments, it appears as though this Court overlooked the fact that Plaintiff’s breach of fiduciary duty claim is entirely predicated on its allegation that “Tremont” (the undefined and highly ambiguous term) acted as its “financial advisor.” *See* Complaint ¶ 24. However, even assuming that Plaintiff has set forth facts sufficient to allege that one of the defendants here functioned as its investment advisor, which it has not, the Fund entities themselves could not possibly be deemed to have undertaken that role, nor are there any allegations in the Complaint to that effect. Instead, the Funds were the entities in which Plaintiff invested, albeit through its life insurance carrier, the Scottish Annuity & Life Insurance Company (Bermuda) Ltd. Because the Funds themselves could not have owed, let

alone breached, a fiduciary duty to the Plaintiff, the Second Cause of Action in the Complaint should have been dismissed as against them. *See* Funds' Reply Brief at 3.

B. Rule 9(b) of the Federal Rules of Civil Procedure Applies to Claims Alleging a Violation of Section 33A.(2) of the Texas Securities Act

The Funds hereby adopt and incorporate by reference the legal arguments and authorities set forth in Point I.B of the Tremont Brief.

CONCLUSION

For the foregoing reasons, and those set forth in the Tremont Brief, the Funds' respectfully submit that the Court should grant their motion for reconsideration and, upon reconsideration, enter an order dismissing the First and Second Causes of Action in the Complaint as against the Funds.

Dated: New York, New York
June 6, 2013

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